

Frederick Smith are owners and executive officers, which statements, at the SEC's request, clarified the integration proposals of Four Jacks' integrated principals.

3. All of these documents are in the record of this proceeding. They say what they say. Scripps Howard has the documents. Even if a hearing were necessary (a proposition that Four Jacks disputes), the only relevant inquiry would be one of state of mind -- whether David, Robert, and Frederick Smith, in making the statements in question, intended to misrepresent or conceal facts about their integration commitments. This inquiry can be conducted simply by taking the testimony of David, Robert, and Frederick Smith. In this regard, Four Jacks has not objected to Scripps Howard's notices of intent to depose David, Robert, and Frederick Smith in connection with the added issues.<sup>1/</sup> However, no additional documents -- and certainly none of the documents sought in Scripps Howard's Motion -- are relevant or necessary to try the misrepresentation issue against Four Jacks.

4. If "fishing expedition" is a term commonly used to describe an overbroad and irrelevant document request, then Scripps Howard's Motion is an extended deep sea fishing

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<sup>1/</sup> Four Jacks does, however, oppose any attempt by Scripps Howard to depose persons other than David, Robert and Frederick Smith, including attorneys for Four Jacks and Sinclair. See Letter from Kenneth C. Howard, Jr. to Martin R. Leader, dated March 28, 1994, second paragraph. If the Judge is unwilling to permit the depositions of Scripps Howard's attorneys with respect to the misrepresentation/lack of candor issues pending against Scripps Howard, where the attorneys themselves have made potentially false and candorless representations to the Commission, then certainly any attempt to examine Four Jacks' or Sinclair's attorneys -- who have made none of the representations giving rise to the Four Jacks issues -- must be held impermissible.

expedition. The Motion is a blatantly intrusive quest for proprietary and confidential business documents of Sinclair that have nothing to do with the question to be explored under the Four Jacks misrepresentation issue: whether the statements in documents of public record on which the MO&O relies were made by Four Jacks' integrated principals with intent to deceive the Commission. Scripps Howard is obviously more interested in harassing its competitor Sinclair than in developing a factual record on which an informed decision on the pending issues can be made. Scripps Howard is not even attempting to hide its capricious zeal to examine the business books and records of an entity with whom it competes in the Baltimore television market.

5. Requests 1 through 16 of the Motion seek a host of business records relating to Four Jacks' principals and Sinclair, including:

- \* federal and state tax information for Four Jacks' principals and Sinclair (Requests 1 and 8);
- \* documents relating to Sinclair loans and loan programs (Requests 2 and 10);
- \* documents relating to Sinclair bonuses and bonus programs (Requests 3 and 9);
- \* documents relating to Sinclair pension and retirement plans (Requests 4 and 11);
- \* documents relating to Sinclair insurance policies for its officers and employees (Requests 5 and 12);
- \* documents relating to compensation paid by Sinclair to Four Jacks' principals and others (Requests 6, 13 and 14);
- \* credit applications filed by any of Four Jacks' principals (Request 7);

- \* documents relating to employment reports filed by Sinclair with governmental agencies (Request 15); and
- \* documents relating to Sinclair's organization and structure (Request 16).

6. All of these document requests seek confidential and proprietary business information. None of the documents sought in these requests have anything to do with Four Jacks' written integration pledges in this case, or with the questioned statements in Sinclair's SEC filings. The only justification offered by Scripps Howard for Requests 1-16 is that the documents requested "are likely to reveal information regarding whether Sinclair treated [Four Jacks'] Principals as employees or whether the Principals consider themselves employees of Sinclair." Motion at 7-8. The only possible inquiry of any relevance, however, is whether David, Robert, and Frederick Smith intended the phrase "then-current employment" in their direct case testimony to encompass their positions with Sinclair. That issue is purely and exclusively one of their state of mind at the time of their direct testimony, and all of the extraneous documents that Scripps Howard requests are absolutely irrelevant to that question. Moreover, even assuming the documents sought in Requests 1-16 have any relevance at all (which they do not), Scripps Howard still has not justified such an incredibly all-encompassing and onerous intrusion into the confidential business records of a competitor.

7. Requests 17-21 seek all drafts of the direct case statements of David, Robert and Frederick Smith (Four Jacks Exs.

2, 3, and 4), all drafts of any Sinclair SEC registration statements as well as all documents or correspondence relating thereto, and all documents identifying persons involved in the drafting of Four Jacks Exs. 2, 3, and 4 and any Sinclair SEC registration statement. Scripps Howard's only justification for these requests is that the documents allegedly "seek information relating to the meaning and scope of the Principals' integration pledge to resign from their then-current employment and representations made in Sinclair Registration Statements regarding the Principals' intent to remain at Sinclair." Motion at 8.

8. Once again, however, Scripps Howard is off the mark. The only representations at issue are the ones made by Four Jacks' integrated principals, individually or through Sinclair, in documents that are already a matter of public record. Those documents speak for themselves, and the "meaning and scope" of the representations therein can be readily determined with reference to the documents themselves or, if more clarification is needed, through the testimony of David, Robert, and Frederick Smith, who made the statements. Certainly prior drafts of either the direct case exhibits or the SEC registration statements cannot provide any "meaning and scope" to the statements of public record that are at issue, for by definition, such drafts do not constitute the statements. They are therefore irrelevant.

9. To the extent that Scripps Howard seeks identification of the persons other than David, Robert, and Frederick Smith who were involved in the drafting of Four Jacks' direct case exhibits

and Sinclair's registration statements, such information is equally irrelevant. Indeed, Requests 17 and 18 are clearly geared toward obtaining the names of the attorneys involved in preparing the documents. But unlike the circumstances giving rise to the addition of qualifying issues against Scripps Howard, no attorney of Four Jacks or Sinclair has made any of the representations at issue with respect to Four Jacks. In short, the only relevant documentary evidence under the issues against Four Jacks consists of statements made as a matter of public record by David, Robert, and Frederick Smith pertaining to their Four Jacks integration commitments. Drafts of the documents in which these statements are contained, correspondence relating to them, and the persons that assisted Four Jacks and Sinclair in composing the documents, are irrelevant.

10. Moreover, most (if not all) of the documents sought in Requests 17-21 are protected by the attorney work product and/or the attorney/client privilege. Scripps Howard has not even attempted to show that there is a substantial need for the information that outweighs its privileged nature. Nor does such a substantial need exist, since the most that can be said of the attorneys for Four Jacks and Sinclair is that they performed the normal task of assisting in preparing documents of which their clients have certified the factual accuracy.<sup>2/</sup>

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2/ Contrast this with the character issues against Scripps Howard, in which Scripps Howard's attorneys themselves have made apparently false and misleading statements in letters and pleadings to the Commission, and where the attorneys, by Scripps Howard's own admission, have been in custody of documents that Scripps Howard has previously represented not to exist.

Conclusion

The issues against Four Jacks never should have been added. In any event, these narrow issues can be resolved through information already in the record of this case, along with the testimony of Four Jacks' integrated principals. Nonetheless, Scripps Howard has submitted an incredibly onerous and intrusive document request that appears directed more at obtaining a competitor's business records than at any realistic exploration of the issues. As set forth above, all of the documents that Scripps Howard requests are irrelevant, proprietary and/or privileged. Scripps Howard's Motion should therefore be denied in its entirety.

Respectfully submitted,

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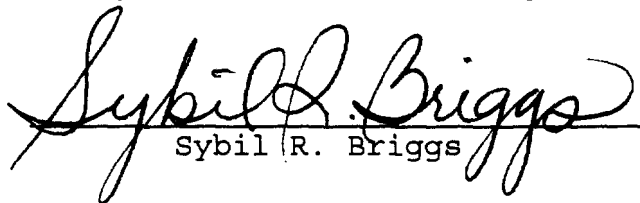
CERTIFICATE OF SERVICE

I, Sybil R. Briggs, a secretary in the law firm of Fisher, Wayland, Cooper, Leader, & Zaragoza, do hereby certify that true copies of the foregoing **"OPPOSITION TO MOTION FOR PRODUCTION OF DOCUMENTS"** were sent this 7th day of April, 1994, by hand delivery, to the following:

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